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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

No. 98-92

GEORGE GLASCOE

v.

SHOPPERS FOOD WAREHOUSE
CORPORATION

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

SUPPLEMENTAL BRIEF

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August 25, 1998

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Petitioner, George Glascoe, respectfully supplements the pending Petition for Writ of Certiorari by calling attention to a new case from the District of Columbia involving Shoppers Food Warehouse and a jury award for slip and fall similar to the facts of the instant

case. This Supplemental Brief is filed pursuant to Rule 15(8) of the Rules of this Court.

REASONS FOR GRANTING THE WRIT

On July 16, 1998, the District of Columbia Court of Appeals affirmed a decision of a trial court awarding damages to a person for injuries sustained in a slip and fall in a grocery store owned by Respondent Shoppers Food Warehouse MD Corporation. See Shoppers Food Warehouse v. Moreno, D.C. App.No.96-CV-21,July 16, 1998, as reported in The Washington Daily Law Reporter, Vol.126,No.162,p.1585 (August 21, 1998).

This case is significant because it further highlights the proper respect for the constitutional role of the jury in making factual determinations in a negligence case. In Moreno, the plaintiff

slipped and fell in a grocery store owned by Shoppers Food Warehouse MD Corporation and, as a result of Shoppers' negligence, sustained back and hand injuries. The jury awarded plaintiff $197,307 for past and future medical expenses, mental anguish, and pain and suffering. Id In upholding the jury's award, the District of Columbia Court of Appeals stated:

> "It is well settled that the determination of negligence is a factual issue. [cites omitted] "When the case turns on disputed factual issues and credibility determinations, the case is for the jury to decide." *** Moreover, '[i]n assessing the legal sufficiency of the evidence, neither the appellate court nor the trial court may act as the trier of fact, and each must 'take care to avoid weighing the evidence, passing on credibility of the witnesses, or substituting [its] judgment for that of the jury.""***

Id. at 1591.

In the instant case in the State of Maryland no such constitutional respect

was shown to the jury's role in making factual determinations and Petitioner was deprived of his constitutional right to a trial by jury. The Court below committed constitutional error by improperly re-examining the facts and granting Respondent's motion for judgment non obstante verdictum after the jury awarded Petitioner damages in the amount of $120,320.00.

Because of the lack of respect shown for jury fact-finding and awards in the State of Maryland when Shoppers Food is a Defendant, victims who are injured must seek creative legal approaches to find alternative jurisdictions for trial in order to avoid a failure of justice. The only substantive difference between the Moreno case and the instant case is the constitutional respect given to the jury's

work in fact-finding in the District of Columbia versus the lack of respect for the jury's work in fact-finding in the State of Maryland.

The Seventh Amendment to the Constitution should be applied and respected for victims of negligence equally in the State of Maryland as in the District of Columbia. Here, the Seventh Amendment afforded Petitioner a right to a jury trial in his negligence suit because such an action is analogous to "Suits at common law' "-- that is, suits brought in the English law courts." See generally, Tull v. United States, 481 U.S. 412,417 (1987).

There is now a conflict between the constitutional respect accorded a jury's factual determinations against Shoppers Food by courts in the District of Columbia

and the State of Maryland. The Seventh Amendment should not be diluted to allow the plaintiff in the Moreno case to retain her jury award of $190,307.00 for injuries she sustained in Shoppers Food in Maryland while depriving Petitioner Glascoe, in the instant case, from retaining his jury award of $120,320.00 for injuries he sustained also in Shoppers Food in the State of Maryland. This Court should act to insure respect for a jury verdict in all jurisdictions of the United States of America in order that the right to a jury trial on legal claims remains intact. See generally, Lytle v. Household Mfg., Inc., 494 U.S.545,550(1990);Dairy Queen,Inc. v. Wood, 369 U.S.500,510-11(1959); and Beacon Theatres, Inc. v Westover, 359 U.S. 500,510-11(1959).

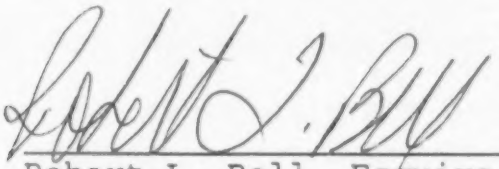
Here, it was constitutional error for the Court of Appeals of Maryland to refuse to review the deprivation of Petitioner's constitutional right and benefit of a jury trial under the Seventh Amendment to the Constitution of the United States based on the vague and overbroad statement that there was no showing that review is "desirable or in the public interest." To the contrary, in our federal form of government, correcting a violation of a constitutional right by a state official is always in the public interest. See, Adickes v. Kress & Co, 398 U.S. 144,168(1970)("This interpretation of custom recognizes that settled practices of state officials may, by imposing sanctions or **withholding benefits**, transform private predilections into compulsory rules of behavior no less than

legislative pronouncements.")(Emphasis added.)

V. CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Court of Appeals of Maryland.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing Supplemental Brief were mailed by first class mail, postage prepaid, this 26th day of August, 1998 to:

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